IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 725 OF 2006.

Deepak Krishna Vaydande.
Age about 28, Occ: Social
work r/o Vijaynagar (E),
Wanleswadi, Tal. Miraj, Dist. ..Petitioner.
Sangli.

V/s.

1. Vilas Shivappa Ghongade,
Age 58 years, Occ:
Social work, r/o Vijaynagar
(E), Wanleswadi, Plot No.40,
Taluka Miraj, Dist. Sangli.

2. Sangli Miraj And Kupwad City
Municipal Corporation, Sangli-
416416. .. Respondents.

Respondent Nos.3 to 9 are deleted by order dated 27.2.2006).

Shri Anand Grover i/b Prakash Mahadik for the petitioner.

Shri S.S. Patwardhan for respondent No.1.

None for respondent No.2 though served.

CORAM : R.M.S. KHANDEPARKAR,J.
DATED : 17.10.2006.

ORAL JUDGMENT:

. Heard.

2. Rule. By consent, the rule is made returnable forthwith.

3. The petitioner challenges the judgment and order dated 2nd January 2006 in Election Petition No.13 of 2003 passed by the Civil Judge, S.D., Sangli, whereby the Court below has directed recount of votes recorded on the ballot papers at Table

Nos.2,9 and 10 in regard to election of the candidate in Ward No. 7A of the Sangli, Miraj and Kupwad Municipal Corporation, Sangli, which took place on 20th July 2003 and 23rd July 2003.

4. The recount has been ordered pursuant to the request for the same by the respondent No. 1 and in relation to complaint that there was mistake in feeding computer about the result of counting at the said tables.

5. The impugned order is being challenged on various grounds. However, it is not necessary to refer to all those grounds and suffice to refer to only one ground viz., the ground on which Court below has directed recount of votes at the said tables. The reasonings arrived at by the Court below to justify the recount of votes disclose that the same has been ordered in order to adjudicate upon the complaint of the respondent No.1 about incorrect feeding of result of counting at the said tables. In otherwords, it is essentially to ascertain whether there had been incorrect feeding of the result to the computer in relation to the counting of votes at the said tables.

6. Drawing attention to the decisions of the Apex Court in the cases of (1) **Vaidevelu**

vs.Sundaram, AIR 2000 SC 3230; (2) Shri Satyanarain Dudhani vs. Uday Kumar Singh, AIR 1993 SC 367 and (3) Tanaji Ramchandra Nimhan vs. Swati Vinayak Nimhan, AIR 2006 SC 1218, learned Counsel appearing for the petitioners submitted that the recount cannot be ordered unless it is absolutely necessary for decision in the election petition.

7. Learned Counsel appearing for the respondent No.1 on the other hand submitted that recount of votes is justified as it is the only solution to ascertain whether there had been incorrect feeding to the computer as regards result of counting of votes at the said tables and that being ground on which impugned order is passed, it does not warrant interference.

8. As already observed above, the only ground on which recount has been ordered is that there has been complaint by the respondent No.1 about incorrect feeding of result of counting at the said tables. It is not in dispute that prior to feeding of information to the computer, the concerned officers who were counting ballot papers and votes recorded therein, had made necessary notings as regards the said counting and those notings on record are in relation to election process in question. Indeed, testimony of the respondent No.1

in the petition also confirms the fact that there was a chart prepared regarding the result of counting of votes at each table. It is also not in dispute that after preparation of such chart, the information was fed to the computer. Grievance of the respondent No.1 being related to incorrect feeding of information about result of counting, one fails to understand as to how said grievance can be adjudicated and decided on the basis of recount of votes. Indeed, considering law laid down by the Apex Court on this aspect, the recount is the last resort to be adopted while dealing with election petition. It is not a case where grievance relates to discrepancy of number of votes polled in favour of candidates but grievance essentially is related to issue of incorrect feeding of information regarding counting of votes. It is nobody's case that there has been mistake in the counting of votes. One fails to understand the necessity of recount of votes to deal with the grievance merely of feeding of result relating to counting of votes. In case in hand, the grievance merely relates to transmission of information pertaining to manual counting of ballots to the computer. The issue necessarily has to be adjudicated upon based on the evidence available in relation to feeding of material to computer. This has nothing to do with the counting of votes or ballot papers which were

collected from ballot boxes. If so, there is absolutely no case made out for directing recount of votes, as rightly submitted by the learned Counsel for the petitioner.

9. Indeed, the Apex Court in **Vadivelu's** case (supra) had held that recount of votes can be ordered very rarely and on specific allegations in the pleadings in the petition that illegality or irregularity was committed while counting. Undisputedly, there has been no such allegation or complaint by the respondent No.1.

10. In **Tanaji Ramchandra Nimhan's** case (supra), it was held that requisites for ordering recount are the prima facie case and pleading of material facts detailing with the irregularity in counting of votes. If so, in the absence of allegation of irregularities in counting of votes, merely with a complaint which relates to transmission of information regarding result of counting to computer, there cannot be a case for recount of votes.

11. Similarly, in **Satyanarain Dudhani's** case, it was held that only 3 line objection application filed before Returning Officer, no objection whatsoever was raised during the counting and no

irregularity or illegality was brought to the notice of the Returning Officer and not even a single instance showing any irregularity or illegality was brought to the notice of the Returning Officer. Applying said law laid down by the Apex Court, the impugned order directing recount cannot be sustained and is liable to be set aside.

12. As to what should be the material on which grievance can be adjudicated upon, it is for the parties to bring this fact to the notice of the concerned Court while dealing with election petition, based on the material placed before the Court to adjudicate the said issue. It is too premature for this Court to express any opinion in that regard.

13. For the reasons stated above, the impugned order cannot be sustained and is set aside and matter is remanded to the lower Court to deal with the same in accordance with provisions of law, bearing in mind the observations made hereinabove.

14. Rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR,J.)